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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/090,888 Confirmation No.: 6489  
Applicant(s): Bantz et al.  
Filed: 3/4/2002  
Art Unit: 2646  
Examiner: Ni, Suhan  
Title: Automatic Audio Adjustment System Based Upon a User's  
Auditory Profile  
Attorney Docket No.: YOR920010527US1  
Customer No.: 29,683

Commissioner For Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Response To Office Action

Sir:

This is in response to the office action mailed 12/19/2005 in regard to the above identified patent application. Claims 1-14 and 23-37 were rejected under 35 U.S.C. §103(a) as being unpatentable over Niederdrank (US 2004/0013280 A1). The examiner is requested to reconsider this rejection.

Niederdrank is based upon a PCT application (application No. PCT/DE01/03576). PCT/DE01/03576 was published on April 4, 2002 as WO 02/28143. However, it was not published in the English language. It was published in German. In accordance with MPEP 706.02(f)(1), because PCT/DE01/03576 was not published in English under PCT Article 21(2), the international filing date is not the U.S. filing date for prior art purposes. The examiner is directed to MPEP 706.02(f)(1)(C)(2). Because the international application of Niederdrank was filed after November 29, 2000, the date for

Appl. No.: 10/090,888

Reply to Office Action of: 12/19/2005

prior art purposes is the U.S. filing date of 03/21/2003. This is after the filing date of 03/04/2002 of the present application. Therefore, Niederdrank is not prior art. The examiner is requested to reconsider his rejection.

In regard to claims 38-40, a petition has been filed regarding the restriction.

Respectfully submitted,

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2/16/06  
Date

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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

2/16/2006  
Date

Clarence F. Mian  
Name of Person Making Deposit